

MEMORANDUM

March 1, 2002

TO: Washington State Board of Health
Don Sloma, Executive Director

FROM: Melissa Burke-Cain, Senior Counsel
Office of the Attorney General

SUBJECT: **Acceptance of Gifts or Donations**

I. Issue Presented

Chapter 43.20 RCW creates the State Board of Health (SBOH), establishes its membership, and provides most of its authority. In general terms, the SBOH has two primary responsibilities: (1) to formulate public health policy and (2) to promulgate rules for the protection of public health. You have asked whether the SBOH may accept gifts or donations and use such gifts or donations in the conduct of its duties.

This memo is intended to provide only general guidance to the Board. The particulars of any specific exercise of the Board's authority with regard to receipt of gifts or donations would require a more detailed analysis in light of surrounding facts, circumstances, and applicable law.

II. Short Answer

The SBOH does not have express or implied authority to accept gifts or donations. Depending on specific circumstances, the SBOH may have authority to engage in joint or cooperative activities with another state or local agency, such as Department of Health, that has legal authority to receive and use gifts, grants, or donations. In that instance, both agencies must have independent statutory authority for such joint or cooperative action. Under certain conditions, the SBOH may accept an in-kind benefit such as use of a meeting place so long as

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the circumstances are within the boundaries imposed on state officers or employees by the Ethics in Public Service Act, RCW 42.52.

III. Discussion

The State Board of Health is a state administrative agency.¹ State agencies may exercise only those powers expressly given to it by statute or necessarily implied therefrom.² Thus the first question is whether the SBOH has express or implied authority to accept gifts or donations.

The SBOH is not expressly authorized to accept gifts or donations although many other state agencies are so authorized.³ Notably, the Secretary of the Department of Health has such express authority in two statutory provisions. RCW 43.70.040 (7) states :

...In addition to any other powers granted the secretary, the secretary may:
(7) Accept gifts, grants, or other funds.

An additional grant of authority is found in RCW 43.70.130(10) which states:

(10) Take such measures as the secretary deems necessary in order to promote the public health, to establish or participate in the establishment of health educational or training activities, and to provide funds for and to authorize the attendance and participation in such activities of employees of the state or local health departments and other individuals engaged in programs related to or part of the public health programs of the local health departments or the state department of health. *The secretary is also authorized to accept any funds from the federal government or any public or private agency made available for health education training purposes and to conform with such requirements as are necessary in order to receive such funds.* RCW 43.70.130 (10) (emphasis added).

¹ Article XX of Washington's Constitution authorizes the legislature to establish a State Board of Health with such powers as the legislature may direct.

² *Tuerk V. State of Washington Dept. of Licensing*, 123 Wash. 2d 120, 864 P.2d 1382 (1994).

³ See e.g. RCW 43.330.230 "...The governing board (Developmental Disabilities Endowment Board) may receive gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the endowment program and may expend the gifts, grants, and endowments according to their terms." For similar express authority see e.g. RCW 70.47.060 (Health Care Authority); RCW 43.07.037 (Secretary of State); RCW 79A.05.235 (Winter recreational program account, Parks and Recreation Commission); RCW 71A.12.120 (developmental disabilities); RCW 43.61.060 (Department of Veterans Affairs); RCW 43.70.130 (Department of Health). Thus, the legislature could, but has not, authorized SBOH to receive gifts or donations.

In the absence of such express authority to accept grants, gifts, or donations, the next question is whether such authority is necessarily implied by RCW 43.20. , the SBOH statute. The Board's principal duties are to outlined in RCW 43.20.050 (copy attached). These duties include "providing a forum for the development of health policy"; "convening regional forums to gather citizen input on public health issues"; " preparing a state public health report (every two years)"; and adopting rules and standards for: public water systems; waste disposal; environmental health conditions in public facilities; isolation an quarantine; prevention and control of infectious and noninfectious disease; accessing data bases for health related research; and may advise the secretary of the Department of Health on health policy matters.

The SBOH has implied power to carry out its legislatively mandated purposes but not to determine issues outside of its delegated functions or purpose. SBOH functions are supported through legislative appropriations. SBOH has no spending authority to use unappropriated funds, no rulemaking authority to set criteria for the use of such funds, nor is there a fund or account within the control of the SBOH to receive a deposit of gifts or donations. ⁴Accordingly, I cannot conclude that receipt of funding from other public or private sources is necessarily implied from the SBOH statute.⁵

An additional question is whether SBOH can be an indirect beneficiary of donations or gifts made to an agency authorized to accept gifts or donations. It is significant the DOH has authority to accept gifts and grants and that many duties of the SBOH are joint or cooperative activities with the Department of Health. In a broad sense, nothing in the SBOH statute would prevent the SBOH from engaging in cooperative activities with the Department of Health using

⁴ RCW 43.79.270 provides a procedure for the disposition of unanticipated receipts in excess of appropriations. However, that provision assumes the existence of an appropriated fund or account through which such unanticipated receipts may pass, and provides a process for the governor and legislature to authorize expenditure of funds in excess of appropriations.

⁵ The *Tuerk* case provides a good example of such implied powers. In that case, the right to require a licensee to provide address information was *necessarily implied* in DOL's statute which authorizes the DOL to regulate the professional activities of real estate brokers.

donations or gifts received by DOH so long as both DOH and SBOH are independently authorized by their respective statutes to engage in the activity.

The authority granted in RCW 43.70.040(7) is very broad and could be used for any of the Secretary's activities. The authority in RCW 43.70.130(10) has the limitation "for health education or training purposes" but expands on the funding sources available to the Secretary of Health by including the federal government or any public or private agency. So long as each agency has adequate substantive statutory authority to take a specific action on its own, the agencies are authorized to work in a joint or cooperative way according to the terms of the Interlocal Cooperation Act, RCW 39.34 et. seq.⁶ The agencies would accomplish this through an interagency agreement, or, depending on the circumstances, through the normal budget allocation process of the agencies.

A final question concerns the ability of the SBOH to benefit from in-kind donations. For example, would SBOH be permitted to share a venue for a meeting with another public or private entity paid for by the outside entity? My response to the question would be a qualified "yes". Again, such a situation will depend on the nature of the activity and its relationship to the Board's duties. However, one of SBOH's express duties is to provide a forum for the development of public health policy, to explore ways to improve the health status of Washington's citizens, and to gather citizen input. Thus, this type of activity would seem to fall generally within the SBOH's grant of authority.

If the SBOH considers in-kind donations of this type, it should be with careful attention to the Ethics in Public Service Act, RCW 42.52. While it is true that an agency has no liability under this law, the members of the Board and the Board's staff are individually subject to its

⁶ Prior to entering into such an arrangement, each agency should consult with its legal advisors to ensure that the agencies have the necessary statutory authority. I am mindful of the recent AWARDS program that was invalidated by a superior court judge because one agency (HCA) lacked statutory authority to implement a program established by another agency.

terms because they are state officers and employees. Thus the Board and staff must be aware of the limitations the ethics law places on the receipt of gifts or other economic benefits and the potential for conflicts (or the public perception of conflicts) inadvertently created while the Board conducts its work. As before, each situation should be evaluated on its own unique circumstances.⁷

I hope you have found this memo useful. As per usual, this memo constitutes the opinions of the author as a legal advisor to the State Board of Health and should not be considered a formal Opinion of the Office of the Attorney General. Please let me know if you have additional questions or concerns.

⁷ While I cannot give legal advice to individual board members or employees, I am able to educate the Board as a whole about the potential risks associated with failure to comply with RCW 42.52. Additionally, it is always possible to seek the opinion of the State Ethics Board in advance regarding a particular set of circumstances and the application of the ethics law.